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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV669635322US, on the date shown below in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: November 3, 2006

Signature: 
(Erika Takeuchi)Docket No.: JJJ-P02-511
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Rueger et al.

Application No.: 10/806,852

Confirmation No.: 2484

Filed: March 23, 2004

Art Unit: 1649

For: METHODS AND COMPOSITIONS FOR THE
TREATMENT OF MOTOR NEURON INJURY
AND NEUROPATHY

Examiner: Chang Yu Wang

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a response to the restriction requirement set forth in the Office Action mailed October 3, 2006. The Examiner has required restriction between claims 10, 19, 24, 25, drawn to a method of preserving motor function in a mammal with amyotrophic lateral sclerosis and claims 12, 21, 26, 27, drawn to a method of preserving motor function in a mammal with spinal cord injury.

Applicants hereby provisionally elect claims of Group II (claims 12, 21, 26, and 27) for continued examination, with traverse for the following reasons.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in a single application (37 CFR 1.142(a)). However, in the present case, all the claimed subject matter is classified in the same class 514, same subclass 2. In fact, in the parent application of the present application, U.S. App. No. 08/937755, now U.S. Patent No. 6,723,698, claims relating to amyotrophic lateral sclerosis (ALS) and claims relating to spinal cord injury were examined together. Therefore, it has already been shown that the search and examination of all the claims that relate to ALS and spinal cord injury in an application can be

made together without serious burden. Applicants submit that in such a case, the examiner must examine them on the merits, even if they include claims to independent or distinct inventions. MPEP 803. Moreover, it is respectfully submitted that Applicants should be able to rely on the Patent Office adhering to consistent practice. The present restriction requirement is inconsistent with the previous examination practice. Applicants respectfully request that the examination of this continuation application be consistent with the examination of the parent application, in which claims related to ALS and claims related to spinal cord injury were considered together.

Based on the foregoing, it is respectfully requested that the restriction requirement be reconsidered and withdrawn, and that all claims presently pending in this application be examined.

The Examiner also required an election of species. For search purposes only, Applicants elect SEQ ID NO: 2 with traverse. Applicants submit all the sequences in the claims are highly related and overlap significantly. In addition, they have been previously examined in the parent case without having been subjected to election. Thus, the requirement for election lacks merit.

Applicants respectfully remind the Examiner that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or which otherwise include all the limitations of an allowed generic species as provided in accordance with 37 CFR 1.141.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. JJJ-P02-511 from which the undersigned is authorized to draw.

Dated: November 3, 2006

Respectfully submitted,

By 

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